Supreme Court of the United States

OCTOBER TERM, 1943

In the Matter of the Petition of NEW ENGLAND FISH COMPANY OF OREGON, a Corporation, Owner, and NEW ENGLAND FISH COMPANY, a Corporation, Charterer, of the American Diesel Fishing Vessel [illegible] ARNOLD For Limitation of Liability.

NEW ENGLAND FISH COMPANY OF OREGON, a Corporation, and NEW ENGLAND FISH COMPANY, a Corporation,

Petitioners,

vs.

MARGARET MEYER, Administratrix of the Estate of ERNEST KRUSE, Deceased, Estate of ANDREW [illegible], Deceased, Estate of GEORGE LEE, Deceased,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN SUPPORT OF PETITION

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PETITION FOR WRIT OF CERTIORARI

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In the Matter of the Petition of NEW ENGLAND FISH COMPANY OF OREGON, a Corporation, Owner, and NEW ENGLAND FISH COMPANY, a Corporation, Charterer, of the American Diesel Fishing Tender O. M. ARNOLD For Limitation of Liability.

NEW ENGLAND FISH COMPANY OF OREGON, a Corporation, and NEW ENGLAND FISH COMPANY, a Corporation,

Petitioners,

vs.

MARGARET MEYER, Administratrix of the Estate of ERNEST KRUSE, Deceased, Estate of ANDREW LEE, Deceased, Estate of GEORGE LEE, Deceased,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MAY IT PLEASE THE COURT:

The petition of New England Fish Company of Oregon, a corporation, and New England Fish Company, a corporation, respectfully shows to this Honorable Court:

I.

Summary Statement of the Matter Involved

Petitioners, as owner and charterer of the vessel O. M. ARNOLD, filed a petition in the district court on February 17, 1940 (R. 26, 66) for limitation of liability (Rev. Stat. §§ 4283-4285, 46 U. S. C. §§ 183-185) for claims resulting from the loss of the vessel on or about August 17, 1939 in

Chatham Strait, Alaska (R. 32). The time fixed by the monition issued pursuant to Admiralty Rule 51 for the filing of answers and claims was March 25, 1940 (R. 36). On that date Oregon administrators for the estates of Ernest Kruse, George Lee and Andrew Lee filed answers and claims by and through counsel for respondent herein (R. 26, 47, 66) (Tr., Cause No. 365, October Term, 1942, *Kruse, et al. v. New England Fish Company of Oregon, et al.*, pp. 1, 3, 7).

These Oregon administrators by and through counsel for respondent herein, had previously filed libels in personam against petitioners in the same court and prosecution of these suits was enjoined at a time when petitioners' exceptions to the libels challenging the right of the Oregon administrators to maintain the actions was pending for hearing before the district court (Tr., Cause No. 365, October Term, 1942, pp. 3, 26). Petitioners challenged the right of these Oregon administrators to file their answers and claims and counsel for the Oregon administrators, now representing respondent herein, made seven successive motions based upon affidavits of counsel for extension of the time for filing answers and claims herein (R. 36) and the district court granted seven extensions of time for the purpose of allowing counsel to correct any defect in the parties claimant in the answers and claims theretofore filed by the Oregon administrators (R. 36). These extensions of time and the period for filing answers and claims finally expired on November 15, 1940, and no requests for further extensions were made (R. 36).

Thereafter the district court sustained petitioners' chal-

lenge to the capacity of the Oregon administrators and their claims were dismissed by decree entered August 25, 1941 (R. 36). From this decree the Oregon administrators appealed to the circuit court of appeals for the ninth circuit, which court in its opinion filed April 22, 1942, sub nom. *The O. M. Arnold*, 127 F. (2d) 648, affirmed the decree of the district court, stating:

> "Claimants contend here that they should be entitled to properly present their claims but that they would be prevented from doing so because the order is res judicata. While it seems clear that the order would not prevent other parties from filing claims (that is personal representatives appointed in Washington) we see no reason why the order appealed from could not state that the dismissal is without prejudice to the filing of claims by representatives appointed in Washington. The order is so modified, and as modified, is "Affirmed." (App. ii).

Petition for writ of certiorari was denied by this Court on October 26, 1942. *Kruse v. New England Fish Company of Oregon,* (No. 365, October Term, 1942) ..... U. S. ....., 87 L. ed. (Adv. Op.) 49.

On July 7, 1942, respondent herein was appointed administratrix of the estates of Ernest Kruse, Andrew Lee, and George Lee by the superior court of the State of Washington for King County (R. 28) and on July 21, 1942 counsel for the Oregon administrators filed answer and claim (R. 2) with the clerk of the district court as counsel for and on behalf of the respondent. Petitioners thereupon moved the district court for an order quashing and striking respondent's answer and claim upon the ground that the same

was not timely filed and that the time for filing answer or claim had expired (R. 22).

On August 1, 1942 respondent moved the district court for an order permitting her as administratrix to file a claim herein as of March 25, 1940, and to confirm the filing of a claim herein made by her as such administratrix on July 21, 1942 (R. 25). Following hearings upon petitioners' and respondent's motions on August 11 and 12, 1942, the district court on September 8, 1942 entered its decree quashing and striking respondent's answer and claim and denying respondent leave to file her claim (R. 35). The district court found that the beneficiaries of respondent and the Oregon administrators and their counsel had actual notice of the pendency of this limitation proceeding at all times, had notice that the capacity and right of foreign administrators was challenged and had ample opportunity to correct the defect, but voluntarily elected to rest their rights upon the answers and claims of the Oregon administrators and elected not to have any qualified Washington representative appointed or appear herein before the extended time for so doing had expired (R. 36). The district court further found that the claimants had not exercised proper or any reasonable diligence in attempting to perfect answers or claims within the time limited or any reasonable period, nor had lack of notice, ignorance of fact or any other circumstance constituting any reasonable, valid or sufficient excuse been shown which excused or justified the failure of claimants to seasonably present answers and claims, but that their failure to do so was at their voluntary election with full knowledge of the consequences (R. 37). The district court also found that by reason of the claimants' unexcused delay,

laches and the lapse of time, there had resulted substantial change of conditions with material and substantial prejudice to petitioners' defense against such late claims (R. 37).

Respondent appealed from the decree of the district court entered September 8, 1942 to the circuit court of appeals for the ninth circuit, which court by its opinion and decree filed June 7, 1943 (R. 61, 68) reversed the decree of the district court.

II.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925. 43 Stat. 938, Title 28 U.S.C. § 347(a).

The date of the judgment to be reviewed is June 7, 1943.

This petition seeks a review of the decision of the circuit court of appeals for the ninth circuit reversing a decree of the district court quashing and striking respondent's answer and claim and denying respondent leave to file claim herein.

III.

Questions Presented and Reasons Relied on for Allowing the Writ

1. Is the time fixed by the district court pursuant to Admiralty Rule 51 for filing claims in a limitation proceeding final and conclusive or has the circuit court of appeals power to review an order of the district court refusing to permit the filing of late claims?

2. If the circuit court of appeals has power to review, does Admiralty Rule 51 confer discretionary power upon

the district court to refuse to permit the filing of late claims in a limitation proceeding which is reviewable by the circuit court of appeals for abuse of discretion only, or has the circuit court of appeals power to substitute its discretion for that of the district court?

The court below held that it had power to review the order of the district court, did not find that the district court had abused its discretion and construed Admiralty Rule 51 to permit it to substitute its discretion for that of the district court.

It is believed that the writ should be allowed for the following reasons:

1. A construction of Admiralty Rule 51 is involved. This Court has heretofore determnied that a construction of its rules is of sufficient importance for an allowance of the writ. *Alexander v. Hillman,* 296 U. S. 222, 80 L. ed. 192.

2. The scope of the power of the district courts to permit the filing of late claims in limitation proceedings under Admiralty Rule 51 has not been, but should be settled by this Court. This is an important question of federal law and of admiralty practice and procedure under the Admiralty Rules of this Court.

3. The decision of the court below extended the time fixed by the district court for filing claims in a limitation proceeding. This decision is in conflict with the decision of the circuit court of appeals for the second circuit in *Galveston Dry Dock & Construction Co. v. Standard Dredging Co.,* (C.C.A. 2, 1930) 40 F. (2d) 442, 444, wherein it is held that the action of the district court pursuant to powers con-

ferred upon it by the Admiralty Rules has the force of law and the circuit courts of appeals "are as much bound to observe it as a statute."

4. The decision here sought to be reviewed is in conflict with the decisions of the lower federal courts and the rule prevailing in other circuits that the district court has discretion to grant or refuse permission to file late claims in a limitation proceeding. *The Argus,* (D.C. Mass. 1900) 100 Fed. 143; *The City of Boston,* (D.C. Mass. 1906) 159 Fed. 257; *In re Eastern Dredging Co.,* (D.C. Mass. 1907) 159 Fed. 549.

5. The court below did not find, nor could it have on the record, that the district court abused its discretion but substituted its discretion for that of the district court in determining whether or not late claims should be filed. The decision below is therefore in conflict with *Charter Shipping Company, Limited, v. Bowring, Jones & Tidy, Limited,* 281 U.S. 515, 74 L. ed. 1008, where this Court held that the exercise of the discretion of the district court in admiralty may not be disturbed unless abused.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the circuit court of appeals for the ninth circuit, commanding that court to certify and to send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 10,288, "In the Matter of the Petition of New England Fish Company of Oregon,

a corporation, owner, and New England Fish Company, a corporation, charterer, of the American diesel fishing tender O. M. ARNOLD for Limitation of Liability. Margaret Meyer, Administratrix of the Estate of Ernest Kruse, deceased, Andrew Lee, deceased, and George Lee, deceased, Appellant, vs. New England Fish Company of Oregon, a corporation, and New England Fish Company, a corporation, Appellees" and that the said judgment of the United States circuit court of appeals for the ninth circuit may be reversed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioners will ever pray.

Respectfully submitted,

NEW ENGLAND FISH COMPANY OF OREGON, a corporation, and NEW ENGLAND FISH COMPANY, a corporation, *Petitioners.*

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